

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Sydney Ellerbe dba Wall Street World, Inc.,

Case No.: 2:24-cv-00555-JAD-DJA

Plaintiff

Becca's Restaurant & Sports Lounge dba
Scotty's Restaurant and Lounge,

Defendant

**Order Adopting
Report & Recommendation and
Dismissing and Closing Case**

[ECF No. 8]

Plaintiff Sydney Ellerbe dba Sydney's Wall Street World, Inc. filed this action for "defamation of character" for various incidents that happened at Becca's Restaurant & Sports Lounge dba Scotty's Restaurant & Lounge.¹ The complaint was screened and dismissed with leave to amend by August 26, 2024.² When the plaintiff filed nothing, the court ordered the plaintiff to show cause by October 10, 2024, why this action should not be dismissed for failure to comply with the court's screening order.³ That deadline passed without response, so the magistrate judge recommends dismissal without prejudice.⁴ Any objection to that recommendation was due by November 12, 2024, but the plaintiff neither objected nor moved to extend the time to do so. "[N]o review is required of a magistrate judge's report and recommendation unless objections are filed."⁵

The law permits a district court to dismiss an action based on a party's failure to comply with a court order.⁶ In determining whether to dismiss an action on this ground, the court must

¹ ECF No. 1-1.

2 ECF No. 5.

3 ECF No. 7.

⁴ ECF No. 8.

⁵ *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

⁶ See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint).

1 consider: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
 2 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 3 disposition of cases on their merits; and (5) the availability of less drastic alternatives.⁷

4 The first two factors, the public’s interest in expeditiously resolving this litigation and the
 5 court’s interest in managing its docket, weigh in favor of dismissal of the plaintiff’s claims. The
 6 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
 7 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
 8 ordered by the court or prosecuting an action.⁸ The fourth factor—the public policy favoring
 9 disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

10 The fifth factor requires the court to consider whether less drastic alternatives can be used
 11 to correct the party’s failure that brought about the court’s need to consider dismissal.⁹ Courts
 12 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
 13 explore possible and meaningful alternatives.”¹⁰ Because this action cannot proceed until and
 14 unless plaintiff files an amended complaint, the only alternative is to enter a second order setting
 15 another deadline. But the reality of repeating an ignored order is that it often only delays the
 16 inevitable and squanders finite resources along the way. The circumstances here do not indicate
 17 that this case will be an exception: there is no hint that the plaintiff needs additional time nor
 18 evidence that the plaintiff did not receive the court’s order. Setting another deadline is not a
 19 meaningful alternative given these circumstances. So the fifth factor favors dismissal.

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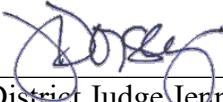
21 ⁷ *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
 22 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

23 ⁸ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

24 ⁹ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
 25 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
 26 *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the
 27 persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic
 28 alternatives prior to disobedience of the court’s order as satisfying this element[,]” i.e., like the
 “initial granting of leave to amend coupled with the warning of dismissal for failure to
 comply[,]” have been “eroded” by *Yourish*).

¹⁰ *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).

1 IT IS THEREFORE ORDERED THAT the Report and Recommendation [ECF No. 8] is
2 **ADOPTED** in full, **this action is DISMISSED**, and the Clerk of Court is directed to **CLOSE**
3 **THIS CASE.**

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5 
6 U.S. District Judge Jennifer A. Dorsey
7 November 14, 2024